215.

SUPREME COURT OF THE UNITED STATES.

No. 102.

JACOB S. MAYBERRY, PLAINTIFF IN ERROR,

vs.

JAMES H. THOMPSON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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J. & G. S. GIDEON, printers.

Pleas had before the honorable the circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama at a term thereof, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-three, before his honor John McKinley, presiding judge of said court.

Be it remembered, that heretofore, to wit, on the eleventh day of February, in the year of our Lord one thousand eight hundred and forty-three, were filed in the office of the clerk of said circuit court, the following writ of error, citation, and transcript of the record, to wit:

Writ of error.

The President of the United States, to the judge of the district court of the United States, for the middle district of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of judgment of a plea which is in the said district court before you, between Jacob S. Mayberry, plaintiff, and James H. Thompson, defendant, a manifest error hath happened to the great damage of the said James H. Thompson, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, for the ninth judicial circuit, southern district of Alabama, together with this writ; so that you have the same at the place of holding said circuit court in the city of Mobile, in the State of Alabama, on the second Monday of March next, in the said circuit court, to be then and there held; that then the record and proceedings aforesaid being inspected, the said circuit court may cause to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable John McKinley, presiding judge of said circuit court, this fourteenth day of December, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-seventh year.

Attest: A. G. GOOCH,
Clerk D. C. middle district, Ala.

Filed in the clerk's office, December 14th, 1842.

Teste: A. G. GOOCH, *Clk.*

Citation.

United States of America, to Jacob S. Mayberry, greeting:

You are hereby cited and admonished to be and appear at the circuit court of the United States, for the ninth judicial circuit, and southern

district of Alabama, to be holden at Mobile, in said State of Alabama, on the second Monday of March next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the middle district of Alabama, wherein James H. Thompson is plaintiff, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William Crawford, judge of the said district court of the United States, for the middle district of Alabama, this 14th day of December, in the year of our Lord one thousand eight hundred and forty-two.

WM. CRAWFORD.

Filed in clerk's office, 14th December, 1842.
Teste: A. G. GOOCH, *Clk.*

Received 18th January, 1843; executed on Wm. M. Murphey, one of the attorneys; also, on Wm. G. Jones, the other attorney, January 18th, 1843.

WM. ARMISTEAD, *U. S. marshal,*
By J. A. BEAL, *D. M.*

Transcript.

UNITED STATES OF AMERICA, *middle district of Alabama:*

Pleas before the honorable the district court of the United States for the middle district of Alabama, at a term thereof begun and held at Tuscaloosa, on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two; the honorable William Crawford, judge of said court, presiding:

Be it remembered, that heretofore, to wit, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and forty-one, was issued from the clerk's office of said district court, a writ of capias ad respondendum, in the words and figures following, to wit:

UNITED STATES OF AMERICA:

District court of the United States, for the middle district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the body of James H. Thompson, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the honorable the judge of the said court, at the place of holding said court at Tuscaloosa, on the fourth Monday in May instant next, to answer to Jacob S. Mayberry, who is a citizen of the State of Mississippi, in a plea of trespass, with force and arms, to his damage of ten thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable William Crawford, judge of the said court, this first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty.

[L. S.]

Issued the 17th day of May, in the year of our Lord one thousand eight hundred and forty-one.

Attest: A. G. GOOCH,
Clerk, D. C., middle district of Alabama.

This is an action of trespass brought to recover damages from the defendant for forcibly taking, seizing, and carrying away certain goods, wares, and merchandize of the plaintiff, at Warsaw, in Sumter county, Alabama.

Attest: MURPHY & JONES,
Plaintiffs' attorneys.

Received, 18th May, 1841, executed same day.

R. L. CRAWFORD,
U. S. marshal, middle district.
By J. P. SANDERS, *D. M.*

And afterwards, to wit, at the May term, 1841, of said district court, the following declaration was filed herein, to wit:

In the district court of the United States, for the middle district of Alabama, May term, 1841.

MIDDLE DISTRICT OF ALABAMA, *to wit:*

Jacob S. Mayberry, who is a citizen of the State of Mississippi, by attorney, complains of James H. Thompson, who is a citizen of the State of Alabama, of a plea of trespass, with force and arms, for that the defendant, on the 16th day of May, in the year of our Lord 1841, at Warsaw, in Sumter county, to wit, in the district aforesaid, with force and arms, seized and took certain goods and chattels of the plaintiff, to wit: One large cask of hardware, marked "J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from George E. Townsend, Nassau street, New York;" one box of glass, "marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from George E. Townsend, Nassau street, New York; five boxes of boots, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from W. A. Ransom & Co., No. 86, Pearl street, New York; six boxes of shoes, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from W. A. Ransom & Co., No. 86, Pearl street, New York; two boxes of hats, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from W. A. Ransom & Co., No. 86, Pearl street, New York; 3 trunks of shoes, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from W. A. Ransom & Co., No. 86, Pearl street, New York; one keg of epsom salts, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from J. & J. F. Tripp, New York; three boxes of medicines, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from J. & J. F. Tripp, New York; one box, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from J. & J. F. Tripp, New York, and containing four boxes of glass, and twen-

ty-five pounds of madder; five boxes of dry goods, marked J. S. Mayberry, Cooksville, Mississippi, care of Bull & Files, Mobile, from Townsend & Brothers, No. , Nassau street, New York; one box of books and stationery, marked "J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from Robertson, Prute & Co., No. 63, Wall street, New York;" one box of undressed sattinetts, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, from J. B. Seaman, Broadway, New York; one box of super rolled kersey, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, from J. B. Seaman, Broadway, New York; one bale of osnaburgs, one bale of Springfield shirting, 1 bale of brown sheeting, two bales of brown cottons, all of said bales being marked in like manner as the box last aforesaid; one bale of brown sheeting, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from George Bradford Ripley, New York; and one box of hoods, marked J. S. Mayberry, Cooksville, Mississippi, care Bull & Files, Mobile, from Edward Bridge, No. 1, William street, New York; of great value, to wit, of the value of ten thousand dollars, and removed and carried away the same, and then and there converted and disposed of the same to his own use.

And also, for that the defendant, on the sixteenth day of May, in the year of our Lord 1841, in the district aforesaid, with force and arms, seized, took, and carried away certain other goods and chattels of the plaintiff, to wit, ten pieces of bed ticking, ten pieces of Russia sheeting, ten pieces of Kentucky jeans, ten pieces of flannel, ten pieces of checks, ten pieces of cotton diaper, ten pieces of bleached drills, twenty pieces of long cloths, fifty pieces of cotton cloth, twenty pieces of cotton shirting, twenty pieces of lawn, ten pieces of bobinet lace, ten pieces of cambric, ten pieces of Irish linen, ten pieces of broadcloths, 5 pieces of casemere, five pieces of sattinets, ten pieces of muslin, ten pieces of mouseline de laine, one hundred pieces of prints, one hundred blankets, one hundred pieces of calico, ten pieces of brown linen, one hundred cotton flags, ten pieces of handkerchiefs, one thousand handkerchiefs, one dress, ten pieces of Georgia nankeens, one hundred pairs of white cotton hose, one hundred pairs of black hose, one hundred pairs of white cotton half hose, one hundred pairs of grey Virginia half hose, one hundred braces, one hundred pairs of gloves, one hundred umbrellas, ten pieces of bombazines, one hundred scissors, one hundred spoons, one hundred fish lines, one hundred wallets, one hundred pocket books, one hundred spectacles, one hundred rifle wipers, one hundred wine waiters, one hundred shoemaker's awls, one hundred awl hafts, one hundred fire arms, one hundred saws, one hundred gimlets, one hundred drawing knives, one hundred squares, one hundred pounds of shoe thread, one thousand knives, one thousand forks, one thousand razors, one hundred razor strops, one hundred spurs, one thousand gun flints, one thousand papers of needles, one hundred papers of pins, one thousand axes, ten thousand buttons, one hundred butts, one thousand locks, one hundred papers of tacks, one hundred shaving boxes, one hundred steele yards, one hundred curry combs, one hundred wool cards, one hundred looking

glasses, one thousand pairs of boots, one thousand pairs of shoes, one thousand pairs of pumps, one thousand pairs of brogans, one thousand hats, one hundred pounds of epsom salts, one hundred pounds of madder, fifty pounds of sal nitre, ten pounds of opium, ten pounds of indigo, ten pounds of wafers, ten pounds of camphor, ten pounds of nutmegs, one hundred boxes of matches, one hundred pounds of soap, one hundred boxes of blacking, one hundred cakes of soap, one hundred bottles of peppermint, one hundred bottles of Cologne water, one hundred bottles of mustard, one hundred bottles of oil, one hundred bottles of opedildock, one pound of quinine, one hundred bottles of ink, one hundred spelling books, one hundred slates, ten reams of letter paper, ten reams of foolscap paper, two thousand quills, one thousand spools of thread, one hundred pieces of cotton osnaburgs, fifty boxes and fifty trunks of great value, to wit, of the value of ten thousand dollars; and then and there carried away the same, and converted and disposed of the same to his own use; and other wrongs to the plaintiff then and there did, to the damage of the plaintiff of ten thousand dollars; and therefore he brings his suit, &c.

MURPHY & JONES,
Pl'ffs. Attos.

And afterwards, to wit, at the said May term, 1841, of said district court, the following plea was filed by the defendant, to wit: and the said Thompson comes and defends, when, &c., where, &c., and for plea says, that he is not guilty in manner and form as said plaintiff has thereof declared against him, and thereof puts himself on the country.

By BLISS & BALDWIN.

And afterwards, to wit, at the term of said court, begun and held on the first Monday after the fourth Monday of November, A. D. 1841, came the parties by their attorneys; and by consent, it was ordered that this cause be continued.

And afterwards, to wit, at the term of said court, begun and held on the fourth Monday of May, A. D. 1842, came the parties by their attorneys; whereupon it is ordered, that this cause be continued on the affidavit of said defendant's attorney.

And now, at this day, to wit, at the term of said court, first aforesaid, begun and held on the first Monday after the fourth Monday of November, A. D. 1842, to wit, on the ninth day of December, A. D. 1842, came the parties by their attorneys; and issue being joined, thereupon came a jury of twelve good and lawful men, to wit: G. W. Mitchell and eleven others, who, being elected, sworn, and charged, well and truly to try the issue joined, upon their oaths do say, that they find the same for the plaintiff, and that the defendant is guilty of the trespass in the plaintiff's declaration specified; and they assess the plaintiff's damages by him sustained, by reason of the trespass of the defendant, to the sum of three thousand seven hundred and nine dollars and ninety-four cents. It is therefore considered by the court, that the said plaintiff do recover against the said defendant the said sum of three thousand seven hun-

dred and nine dollars and ninety-four cents, the damages by the jury assessed as aforesaid, in manner and form aforesaid, together with the costs by him about his suit in this behalf expended.

Memorandum.

On the trial of this cause, the defendant's counsel tendered a bill of exceptions, which was received, signed and sealed by the court, and ordered to be made a part of the record in this cause, which bill of exceptions is as follows, to wit:

JACOB S. MAYBERRY, vs. JAMES H. THOMPSON. } District court, fall term, 1842, bill of exceptions.

Be it remembered, that in the trial of this cause, the plaintiff in the first instance introduced testimony tending to show, that some time in February or March, 1841, he sent cotton and drafts to Mobile, and received the proceeds thereof, about $3,200, and that he went with the same, and with letters of recommendation, to the city of New York, for the purchase of goods, and there purchased sundry bills of goods of different houses, for which he paid to each house about one-half of the price of each purchase in money, the proceeds of the cotton and drafts aforesaid, and gave his own notes to said several houses for the residue of the purchase money, maturing at different dates, which said notes still remain unpaid, and that the sellers of said goods knew no persons in the transaction except the plaintiff; that said goods were marked in the name of the plaintiff, and sent forward to his address for Cooksville, in the State of Mississippi, but that, before reaching their destination, they were seized by the defendant, at Warsaw, in the State of Alabama, and by him sold.

The defendant then introduced testimony, conducing to shew that a fraudulent and collusive arrangement had been entered into between the plaintiff and one James Randalls some time in June, 1840, for the purpose of screening the property of said Randalls from claims of his creditors, by which a certain stock of goods and other property, which said Randalls then had, were collusively passed to said plaintiff, and the business of said Randalls thereafter, until after the seizure of said goods by defendant, was carried on in the name of said plaintiff; but that said business, including the sending of said cotton and drafts to Mobile, the raising of said money and the purchase of said goods in New York, though done ostensibly by said plaintiff, and in his name, was really done by said Randalls, acting by and through said plaintiff, and in his the plaintiff's name, and that said goods, seized and sold by the defendant, were by him seized and sold as an officer on process in his hands against said Randalls, as his, the said Randalls' property, and for his debts; and also, that the plaintiff had little or no cotton at or about the time said cotton was forwarded to Mobile as aforesaid.

The plaintiff then introduced the said Randalls as a witness, and asked him the single question, whether he had interest in said goods seized, at the time they were seized and sold; to which question the witness an-

swered that he had not. The defendant then, on cross examination, for the purpose of contradicting said Randalls by the testimony of other witnesses, if he answered in the negative, and thus impeaching his testimony, inquired of him whether he had stated to an individual, at about the time said cotton was sent to Mobile, that he, the said Randalls, had succeeded in sending cotton to Mobile so that the same had not been attached; but the plaintiff's counsel objected to the witness answering the question, and the court ruled that the inquiry was of matter collateral and irrelevant, and that the witness need not answer the question propounded, and he did not answer the same. The defendant, also, for the same purpose last expressed, proposed to inquire of said Randalls, whether he had not stated to a certain individual, at or about the time said plaintiff left for New York, for the purchase of said goods, that he, the said Randalls, had sent said plaintiff for goods; but it was ruled by the court that it would not be competent for the defendant to discredit said witness by showing that he had made statements when out of court, and not on oath, different from his testimony given in court; and the question was not permitted to be put.

The court instructed the jury, that if they believed that the goods purchased by the plaintiff in New York were purchased with the money of the said Randalls, and that the plaintiff acted merely as a shield for said Randalls, to protect the said goods from Randalls' creditors, that the said goods were to be considered as the goods of Randalls, and were lawfully attached by the defendant on an execution against Randalls; but that when the goods were purchased for said Randalls in part, with the money of Randalls, and in part upon the credit of plaintiff, he giving his note to the several New York mercantile houses from which the purchases were made, and they being ignorant of any fraud between the plaintiff and said Randalls, then the said goods thus purchased could not lawfully be sold by the defendant on execution against said Randalls; that the remedy of creditors of Randalls, when the goods were purchased in part with the money of Randalls, and in part upon credit of plaintiff, was in a court of equity, where the interest of all concerned might be apportioned and adjusted.

The defendant thereupon requested the court to instruct the jury, that if they should find for the plaintiff, they might, in making up their verdict, deduct from the amount the money and lawful interest thereon, in all cases where said goods were purchased in part with the money of Randalls, and in part upon the credit of the plaintiff; which charge the court refused to give.

And the defendants took exception to the beforementioned ruling and charge of the court, and the refusal to charge as requested, and prayed that his said exceptions might be signed, sealed, and allowed, and the same is done accordingly.

In testimony of all which, I hereto set my hand and seal, this the 9th day of December, A. D. 1842.

WILLIAM CRAWFORD, [SEAL.]
Judge of the district court of the United States,
for the middle district of Alabama.

And afterwards, to wit, on the 14th day of December, A. D. 1842, the said defendant, James H. Thompson, filed in the clerk's office of said court a bond for the prosecution of his writ of error, which bond is in the words and figures following, to wit: "United States of America, circuit court of the United States, for the ninth judicial circuit, southern district of Alabama.

JAMES H. THOMPSON, vs. JACOB S. MAYBERRY. } In error.

Know all men by these presents, that we, James H. Thompson, and James Hogan and Jonathan Bliss, are held and firmly bound unto Jacob S. Mayberry, in the sum of seven thousand four hundred and ninteen dollars and eighty-eight cents, to be paid to the said Jacob S. Mayberry, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this tenth day of December, A.D. 1842.

Whereas, the above named James H. Thompson hath prosecuted a writ of error to the circuit court of the United States, for the ninth judicial circuit, southern district of Alabama, to reverse the judgment rendered in favor of the above named Jacob S. Mayberry against the above named James H. Thompson, in the above mentioned suit, by the district court of the United States, for the middle district of Alabama.

Now, therefore, the condition of this obligation is such, that if the above named James H. Thompson shall prosecute said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JAMES H. THOMPSON, [SEAL.]
JAMES HOGAN, [SEAL.]
JONATHAN BLISS. [SEAL.]

Signed, sealed, and delivered, in presence of—

"Let a writ of error issue agreeably to the prayer of the petitioner, December 14th, 1842.

WM. CRAWFORD."

Whereupon, a writ of error was issued in the words and figures following, to wit:

"UNITED STATES OF AMERICA:

The President of the United States of America to the judge of the district court of the United States, for the middle district of Alabama, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said district court before you, between Jacob S. Mayberry, plaintiff, and James H. Thompson, defendant, a manifest error hath happened, to the great damage of the said James H.

Thompson, as by his complaint appears; and it being fit that if the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, for the ninth judicial circuit, southern district of Alabama, together with this writ, so that you have the same at the place of holding said circuit court in the city of Mobile, in the State of Alabama, on the second Monday of March next, in the said circuit court to be then and there held; that then the record and proceedings aforesaid being inspected, the said circuit court may cause to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable John McKinley, presiding judge of said circuit court, this fourteenth day of December, in the year of our [L. S.] Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-seventh year.

Attest: A. G. GOOCH,
Clerk D. C., middle district of Alabama.

I, Albert G. Gooch, clerk of the district court of the United States, for the middle district of Alabama, hereby certify that the foregoing is a true and complete transcript of the record and proceedings in a certain cause lately determined in said district court, wherein Jacob S. Mayberry was plaintiff, and James H. Thompson was defendant, as appears from the records of said district court, now remaining in said clerk's office.

In testimony of which, at office in the city of Tuscaloosa, I have hereto put my hand, and affixed the seal of said district court, [L. S.] this twelfth day of January, in the year of our Lord one thousand eight hundred and forty-three.

A. G. GOOCH,
Clerk D. C., middle district of Ala.

Whereupon afterwards, to wit, at a term of the circuit court of the United States, for the fifth (late the ninth) judicial circuit, southern district of Alabama, begun and held in and for said district, at the place of holding said court at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-three, the plaintiff in error, by attorney, filed his plea as follows, to wit:

Circuit court of the United States of America for the southern district of Alabama.

JAMES H. THOMPSON,
vs.
JACOB S. MAYBERRY.

And now on this day comes the plaintiff in error, by his attorney, and complains, that there is error in the record and judgment of this cause, which judgment was rendered in the middle district of Alabama, and at

a court held at Tuscaloosa; and said plaintiff here assigns for error the bill of exceptions, sealed upon the trial of said cause, and all the matters therein arising; that the court erred in charging the jury as therein stated, and in refusing to charge as requested, as therein shown; also in refusing to permit the questions to be asked of the witness as stated, and in permitting the testimony objected to, and in refusing the evidence offered by Thompson; for which errors the plaintiff prays said judgment to be reversed.

DARGAN & LOCKWOOD, *for plaintiff.*

And afterwards, to wit, on the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and forty-three, being a day of the term of said circuit court last aforesaid, before his honor John McKinley, presiding judge, the following proceedings were had, to wit:

"JAMES H. THOMPSON,
vs.
JACOB MAYBERRY.

In this cause his honor William Crawford not sitting.

Writ of error to the district court of the United States, for the middle district of Alabama.

This day came the parties, by their attorney, and this cause coming on to be heard upon the transcript of the record, and the matters assigned for error being heard by the court, and mature deliberation being thereupon had, it is considered by the court, that there is error in the record and proceedings of the said district court; whereupon it is ordered and adjudged by the court there, that the judgment of the said district court be reversed and annulled, and that the said plaintiff recover his costs."

Whereupon, afterwards, was filed in the office of the clerk of the circuit court aforesaid the following bond, to wit:

"*Supreme Court of the United States:*

JACOB S. MAYBERRY,
vs.
JAMES H. THOMPSON. } In error.

Know all men by these presents, that we, Jacob S. Mayberry, of Noxubee county, in the State of Mississippi, and Jacob Mayberry, of Bibb county, in the State of Alabama, are held and firmly bound unto the above named James H. Thompson, in the sum of two hundred dollars, to be paid to the said James H. Thompson, his executors or administrators; for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 21st day of May, A. D. 1843.

Whereas, the above named Jacob S. Mayberry hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the circuit court of the United States, for the fifth ju-

dicial circuit, southern district of Alabama, in a suit lately pending in the said court, in which the said James H. Thompson was plaintiff in error, and the said Jacob S. Mayberry was defendant in error. Now, therefore, the condition of this obligation is such, that if the above named Jacob S. Mayberry shall prosecute his writ of error to effect, and answer all costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. S. MAYBERRY, [SEAL.]
JACOB MAYBERRY, [SEAL.]

Signed, sealed, and delivered in presence of—
MAY 26, 1843.

I approve the foregoing bond, and direct that a writ of error issue agreeably to the prayer of the plaintiff.

WM. CRAWFORD, *Judge.*

Whereupon was issued the writ of error which is herewith enclosed.

I, David Files, clerk of the circuit court of the United States, for the fifth judicial circuit, southern district of Alabama, do hereby certify, that the above and beforegoing thirteen pages contain a true, full, and perfect exemplification of the record and proceeding in a certain cause, lately determined before said court, wherein James H. Thompson was plaintiff in error, and Jacob S. Mayberry was defendant in error.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand and affixed the seal of said circuit court, this [SEAL.] eighth day of June, in the year of our Lord one thousand eight hundred and forty-three.

DAVID FILES,
Clerk C. C., So. dist. Ala.

UNITED STATES OF AMERICA:

The President of the United States, to the honorable the judges of the circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of judgment, of a plea in the said circuit court before you, between James H. Thompson, plaintiff in error, and Jacob S. Mayberry, defendant in error, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; and it being fit that the error, if any there be, should be duly corrected, and full and speedy justice be done to the parties aforesaid, do command you, if judgment be rendered, that then under your seals, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington, on the second Monday of January next, in the Supreme Court of the United States to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings therein to correct the error, what

of right, according to law and the custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, [SEAL.] this second Monday of January, in the year of our Lord one thousand eight hundred and forty-three.

Issued the 21st day of May, A. D. 1843.

Attest: DAVID FILES,
Clk C. C. south. dis't Ala.

UNITED STATES OF AMERICA, *ss:*

To James H. Thompson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the 5th judicial circuit, southern district of Alabama, wherein Jacob S. Mayberry is plaintiff in error, and you are defendant in error, to shew cause if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the [Supreme Court of the] United States, this 26th day of May, in the year of our Lord 1843.

Issued this 26th day of May, 1843.

WM. CRAWFORD,
One of the judges of the United States, for the fifth judicial circuit.

This citation has been duly and legally served, May 26, 1843.

JAMES H. THOMPSON,
By J. BLISS, *his attorney.*

Filed 13 Jan'y, 1844.